IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1048 of 2006
With
FIRST APPEAL No. 1049 of 2006
With
FIRST APPEAL No. 1050 of 2006
With
FIRST APPEAL No. 1051 of 2006
With
FIRST APPEAL No. 1052 of 2006
With
FIRST APPEAL No. 1053 of 2006
With
CIVIL APPLICATION No. 4531 of 2006
With
CIVIL APPLICATION No. 4532 of 2006
With
CIVIL APPLICATION No. 4533 of 2006
With
CIVIL APPLICATION No. 4534 of 2006
With
CIVIL APPLICATION No. 4535 of 2006
With
CIVIL APPLICATION No. 4536 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OIL & NATURAL GAS COMMISSION LTD.
Versus
PANDYA PRAHLADBHAI MANILAL AND OTHERS

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Appearance :
MS KJ BRAHMBHATT for Appellants.
MR PRAKASH K JANI for Respondents 1-2
Mr. N.D. Gohil, Asst. Government Pleader for Respondents : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 01/08/2006

COMMON ORAL JUDGMENT

All these appeals are filed by the appellant, Oil & Natural Gas Corporation Limited, Mehsana by resorting to section 54 of the Land Acquisition Act read with section 96 of the Civil Procedure Code. Since common points of law and facts are involved in all these appeals, with the consent of parties, these appeals are disposed of by this common judgment.

By filing these appeals, the appellant has challenged the judgment and order passed by the Reference Court in Land Acquisition References No. 3134 of 2003 to No. 3139 of 2003. The learned Judge of the Reference Court treated L.A.R. No. 3138/03 as the main case and common evidence is lead in the aforesaid References.

On behalf of the ONGC, certain agricultural lands of the claimants were temporarily acquired for its project. Somewhere in 1993, the

General Manager of ONGC, Mehsana Project sent a proposal to the Government for acquisition of the lands in question for a temporary period under section 35 of the Land Acquisition Act, 1954 [hereinafter referred to as the Act]. In Land Acquisition Cases No. 65/93 and others, Special Land Acquisition Officer, Mehsana awarded Rs.1.10 per sq. mtr. The claimants. being dis-satisfied with the fixation of the aforesaid rent, requested the Land Acquisition Officer to make References under section 35 (3) of the Act for fixation of adequate amount of rent. In the Reference Application, in clause 8 it is stated that the award was declared on 16.5.1994, certified copy was applied for on 28.08.97, and the same was ready for delivery on 04.09.97 and after receiving certified copy of the award, Reference Application is preferred in time. The Special Land Acquisition Officer thereafter referred the matter under section 35 (3) of the Act. The said Land Acquisition References were accordingly decided by the Reference Court being Reference No. 3134/03 to No. 3139/03. The 4th Joint Civil Judge, Senior Division, Mehsana by his order dated 22nd April 2004 partly allowed the said References under section 35 (3) of the Act and the present appellant was directed to pay additional amount of rent at Rs.3-75 per sq. mtr. over and above the amount awarded by the Special Land Acquisition Officer. The learned Judge also granted interest at 9% for the first year and further interest at 15% for the subsequent years. Learned Judge also granted 10% average rise in the rent after expiry of the period of three years period from the date of taking possession till the possession is handed over back to the claimants. The appellant, acquiring body, has challenged the aforesaid judgment by filing the present First Appeals.

Learned advocate Ms. K.J. Brahmbhatt for the appellant submitted that the order of the Reference Court is contrary to law. It is submitted by her that the References itself were not competent. It is further

submitted that the order for giving 10% average rise every year is also contrary to law.

Learned advocate Mr. P.K. Jani appearing for the claimant tried to justify the judgment of the Reference Court.

I have heard both the learned advocates. I have also gone through the Record and Proceedings which is called for by this Court. In my view the Reference Court has committed a serious error of law in deciding the References.

Learned Senior Advocate, Mr. A.J. Patel as well as advocate Mr. R.R. Marshall, who were present in the Court have also assisted the Court on the question of interpretation of section 35 of the Act.

It is not in dispute that on behalf of ONGC, the lands in question were sought to be acquired for a temporary period. Temporary acquisition of land is covered in Part VI of the Act containing three sections, viz. Sec. 35, 36 and 37, which read as under:-

> "35.(1). Subject to the provisions of Part VII of this Act, whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2). The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3). In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court".

36(1). On payment of such compensation, or on executing of such agreement on or making a reference under Section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2). On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein;

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of

such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

There are two State amendments so far as section 35 is concerned. The said amendments are, by section 17 of the Land Acquisition (Gujarat Unification and Amendment Act XX of 1965, in sub-section (1) of section 35 of the principal Act, the words “waste and arable” are deleted. Similarly, the Maharashtra amendment by section 10 of the Land Acquisition [Bombay amendment] Act XXXV of 1953 has been extended to the whole State of Gujarat by Gujarat Act XX of 1965. The said amendment in section 35 reads as under:

In section 35 -
(a). after sub-section (1), insert the following sub-section, namely,-

(“1-A). Before issuing a direction under sub-section (1) the State Government may require the Collector to submit -
(a). a plan of the land which is needed for occupation and use; and
(b). an estimate of the compensation that would be

payable under sub-section (2);
and upon the issue of such requisition the Collector shall cause public notice of the substance of the requisition to be given at convenient places in the locality in which the land is situated.

(1-B). After the issuance of such notice, it shall be lawful for any officer either generally or specially authorised by the Collector in this behalf, and for his servants and workmen to exercise the powers conferred by sub-section (2) of Section 4.

(1-C). The officer authorised under sub-section (1-B) shall at the time of his entry pay or tender payment for all necessary damage to be done as aforesaid and, in the case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final".

(b). in-sub-section (2), for the words "the Collector shall thereupon" substitute the words "upon the issue of a direction under sub-section (1) the Collector shall".

Reading the aforesaid provisions, it is clear that temporary acquisition is permissible for a period of three years only. At the time of acquiring the land for a period of three years as envisaged under section 35 of the Act, it is open to the claimants to ask for Reference under section 35 (3) of the Act. The Court is, therefore, required to determine the fixation of compensation, either in a gross sum of money, or by monthly or other periodical payments [which is popularly known by all

concerned as "rent"] in such Reference to find out whether compensation, either in a gross sum of money, or by monthly or other periodical payments fixed by Land Acquisition Officer is proper or not. Looking to the scheme of the Act, it is clear that beyond three years, the provisions of section 35 of the Act is not applicable. On the expiration of the term of temporary acquisition of three years, so far as the Collector is concerned, his duties are prescribed in Sections 36 (2) and 37 of the Acts, i.e.:

(1). make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement;

(2). restore the land to the persons interested therein; and,

(3). if there is any difference as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, refer such difference to the decision of the Court.

It is, therefore, not open to the Collector to make a Reference for determining the compensation, either in a gross sum of money, or by monthly or other periodical payments for the subsequent period after expiration of the temporary acquisition period by resorting to Sec. 35 (3) of the Act. If the acquiring body has entered into any written or oral agreement with the landowners, the acquiring body may retain the lands in pursuance of such oral or written agreement, if any, and such retention will be governed by the oral or written agreement, but certainly the provisions of section 35 of the Act would have no application after the aforesaid temporary acquisition period is over. Whatever amount is fixed between the parties will be governed by the new contract, if any, between the landowners and the acquiring body. Such retention of possession or fixation of amount of rent will be governed under ordinary law, and not under the Act. If the acquiring

body has retained the possession by separate agreement between the acquiring body and the landowners, the same would be subject to an agreement between the parties, but in such an eventuality, if there is any dispute between the acquiring body and landowners, the Collector cannot make a reference for such period as if it is a reference under section 35 (3) of the Act. In other words, the Collector has no power to make a reference for fixing the amount of rent or compensation for a period exceeding three years from the commencement of such occupation. In a Reference under section 35(3) of the Act, the Court can only determine compensation/amount in connection with the period of three years from the date of taking possession. Considering the aforesaid provisions, it is clear that interested persons can ask for reference to the Court under section 35(3) of the Act if such persons are not satisfied by the sufficiency of the compensation or apportionment fixed by the Collector at the time of taking possession for occupation of the land for a temporary period of three years.

After the aforesaid period is over, there are two options available:

(1). Under section 36 (2), on the expiration of the term, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government can proceed under this Act to acquire the land as if it was needed permanently for a public purpose or, if there is any difference as to the condition of the land, make Reference to the Court u/s 37;

(2). The landowners and the acquiring body may enter into independent contract or agreement but the same is outside the purview of the provisions of the Act.

So far as the provisions of the Act are concerned, as per the scheme of the Act, under section 36 of the Act, possession can be taken by the Collector from the landowners on payment of such compensation or on execution of such agreement or on making a reference under section 35 and such possession can be continued for a period of three years. On the expiration of the term the Collector shall restore the land to the persons and shall also make or tender to the persons interested compensation for the damage if any done to the land and not provided for by the agreement. However, if the land has become permanently unfit, and if the parties so require, the appropriate Government can proceed to acquire the land as if it was needed permanently for a public purpose. If there is any difference as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court. As stated above, this Reference under section 37 is after expiration of the term. Thus, considering the scheme of the Act, on the expiry of the term, the Collector has to restore the possession. If there is any agreement between the acquiring body and the landowners, the occupation can be continued subject to the terms and conditions of such agreement. While handing over the possession on the expiration of the term, if there is any difference as to the condition of land etc. the Collector can make a Reference for the decision of the Court. The said reference u/s 37 is altogether different than the Reference under section 35 (3) of the Act. However, one thing is certain; the Collector has no power to make a reference under section 35 (3) of the Act for “sufficiency of compensation or apportionment thereof ” for any period exceeding three years from the commencement of such occupation.

It is required to be noted that if the acquiring body has retained the possession after the stipulated period under section 35 of the Act, the acquiring body and the landowners can mutually agree the quantum of compensation/rent by mutual understanding. Such fixation of rent is clearly dehorse the provisions of the Act and if any dispute arises between the acquiring body [which cannot be said to be acquiring body at all after expiry of the period of three years] and the land owners, the proper remedy is to approach the appropriate civil court for getting the dispute resolved through ordinary civil proceedings. If the acquiring body has retained the possession of the lands after the stipulated period, the land owners can move the Collector under section 36 of the Act to restore the land, and if at that time it is found that the land has become permanently unfit to be used for the purpose for which it was used immediately before the temporary occupation, and if there is any difference as to the condition of the land at the expiration of the term or as to any matter connected with the said agreement, the Collector can refer such difference to the decision of the Court under section 37 of the Act. However, as stated above, this reference is altogether different from the reference under section 35 (3) of the Act.

Similarly, the acquiring body for whom the land was temporarily acquired can legitimately raise grievance that after the aforesaid period is over, by written agreement or oral understanding, the possession is allowed to be continued for which particular amount towards compensation/rent is fixed between the parties to the agreement. If any such eventualities have taken place after a period of three years is over, the same is governed by the contractual rights between the parties. If the possession of the land temporarily acquired is continued beyond a period of three years without there being any written agreement or oral understanding, the land owners can take appropriate proceedings for

taking back the possession as well as for damages and mesne profits for the intervening period under section 37 of the Act, but the Special Land Acquisition Officer has no jurisdiction to make any reference in the aforesaid circumstances under section 35 (3) of the Act as section 35 (3) is applicable only during the temporary acquisition which is in force for a period of three years. Once the aforesaid period is over, temporary acquisition automatically comes to an end. In that view of the matter, even if the Land Acquisition officer has made a Reference, the trial court was duty bound to see whether the proceedings under the Act is competent, and whether Reference could have been validly made under section 35 (3) of the Act.

In the instant case, it seems that the Collector has made a reference under section 35 (3) of the Act and the Reference Court decided the References and also directed to pay 10% increase for price rise subsequent to even the period of three years. In my view, the Reference Court could not have given any such direction which may go beyond the period of three years for which the land was originally acquired under Part VI of the Act for temporary occupation of land. Even if the acquiring body has retained the possession after a period of three years from taking possession, the Court, under the Land Acquisition Act, cannot fix any rent/compensation or amount for such retention as the same is outside the purview of the Act. In the instant case, it is not even the case that after the initial period of three years of temporary acquisition is over, there is a further move on the part of the acquiring body by which further proceedings have been initiated under section 35 of the Act for acquiring the land again for a temporary period of three years, though this Court has its own doubt whether after the period of three years are over, a further temporary acquisition would be permissible at all. Looking to the scheme of the Act, it is clear that

temporary acquisition is permissible only for a period of three years, otherwise it may turn out to be a permanent acquisition.

Since the trial Court has not addressed itself on this aspect, and since there is nothing on record for coming to the conclusion that any fresh proceedings under section 35 of the Act has been initiated thereafter, the matters are required to be sent back to the trial Court to decide this question. If the trial Court comes to a conclusion that after expiry of initial period of three years of temporary acquisition, for subsequent period References have been made, naturally such references are required to be rejected as the same is not maintainable and the same shall be dehorse the provisions of the Act. Similarly, if the Reference is in connection with the period of three years from obtaining the possession by the acquiring body, the trial Court can decide such Reference under section 35(3) of the Act on its own merits for considering appropriate compensation/rent for a period of three years which starts from taking possession from the land owner and can determine whether the amount so fixed by the Collector at the time of taking possession is adequate or proper.

In the result, the judgment and order passed by the Reference Court in Land Acquisition References No. 3134 of 2003 to No. 3139 of 2003 is quashed and set aside, and the matters are sent back to the trial Court to re-hear the References and to decide the same in accordance with law and as per the observations made in this judgment. If ultimately it is found by the trial Court that Reference under section 35 (3) of the Act is made in connection with the original period of three years, the Court can certainly determine the question about fixation of rent for the aforesaid period during which the land was under temporary acquisition; but if it is found that the Reference is made for a period beyond three

years from taking over possession, naturally no relief under section 35 (3) can be granted. The Court below shall determine this question and pass appropriate order by deciding the entire References afresh. Such decision shall be rendered by the court below at the earlier possible, and in any event, within six months from today. It is, however, clarified that this Court has not expressed any opinion whether the nature of the possession by the acquiring body is legal or not as the same can be subject to any other agreement between the parties, and if there is none, the land owners can certainly move the Collector under section 36 of the Act for restoring the land to them. Whether the acquiring body has continued in possession in pursuance of some contractual agreement, is a question which is required to be decided in a separate proceedings if taken out by the parties. In these appeals, this Court has only decided the scope of section 35 (3) of the Act to the effect that Reference under this section can be made only for a period up to three years from the commencement of occupation of the land and the Reference Court cannot decide the Reference under sec. 35(3) of the Act for a period exceeding three years from the date of commencement of the occupation.

Registry is directed to return the R & P to the Reference court FORTHWITH.

All these appeals are accordingly allowed.

This Court places on record its appreciation for the assistance rendered by Senior Advocate Mr. A.G. Patel and advocate Mr. R.R. Marshall.

In view of the above order passed in the main First Appeals, no order in the Civil Applications.

[P. B. MAJMUDAR, J.]

mathew